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BEFORE THE STATE OF WASHINGTON  
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of Application No. 2003-01:  
SAGEBRUSH POWER PARTNERS, LLC;  
KITTITAS VALLEY WIND POWER PROJECT

APPLICANT'S RESPONSE TO INTERVENOR  
F. STEVEN LATHROP'S MOTION TO STAY  
ADJUDICATORY HEARING

The attorney for intervenor F. Steve Lathrop filed a motion to stay the adjudicator hearing presently set to commence, August 16, 2004, late on Friday July 30, 2004. This motion was subject to discussion in the prehearing conference held on August 2, 2004. The parties were ordered to respond to the motion by Wednesday, August 04, 2004. Lathrop's attorney was given until Monday, August 9, 2004 to respond to the parties' responses, for the stated reason that he was on vacation. EFSEC is to render its decision on the motion late Monday, August 9, 2004 or early Tuesday, August 10, 2004. Motions to strike prefiled testimony were due on Tuesday, August 3, 2004, with responses due Friday, August 6, 2004 along with written opening statements. At the prehearing conference the attorneys for ROKT and the County announced that they would be filing additional motions the next day, and the parties were ordered to respond to those motions by Friday, August 6, 2004. These motions have been filed, and with respect to the County there were 9 separate motions. All of these motions, except the motions to strike testimony, relate to issues that existed throughout the entire proceeding should have been made a long time ago, and in a manner allowing more time for response and consideration. The Applicant is concerned that the timing of these motions are merely a delay tactic. Although the

APPLICANT'S MOTION TO STRIKE  
PRE-FILED TESTIMONY

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1 Applicant agrees with the response schedule ordered by EFSEC, because of the August 16, 2004  
2 date for commencement of the hearing, it is stating a concern regarding the response times  
3 necessitated by the late filings of these motions.  
4

5 The Applicant responds and objects to Intervenor F. Steven Lathrop's motion. The objection is  
6 based upon, but not limited to the following grounds:  
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9 1. Although stated as a merely a motion to stay, it in essence is a dispositive motion,  
10 because if granted it would deprive EFSEC of its statutory preemptive authority, and  
11 render the entire EFSEC proceeding moot. In effect it is a dispositive motion in  
12 violation of Prehearing Order 1, which requires such motions to be filed 45 days  
13 before the commencement of the adjudicatory hearing.
- 14 2. There is no authority upon which a stay can be granted. Neither EFSEC's enabling  
15 statute, nor its procedural rules allow or have any provisions for stays. RCW 34.05  
16 (Administrative Procedure Act) does not provide for, or allow stays by administrative  
17 entities.
- 18 3. The only provision in the Administrative Procedure Act pertinent to stay requests is  
19 RCW 34.05.467, which relates to judicial stays of administrative agency orders.  
20 Stays are only allowed if they relate to public health, safety or welfare grounds. The  
21 party requesting the stay has the burden to show the following:  
22
  - 23 a. That it is likely to prevail when the court finally disposes of the matter.
  - 24 b. That without the stay the party would suffer irreparable injury.
  - 25 c. The stay would not substantially harm other parties.

1 d. The threat to the health, safety or welfare is not sufficient to justify state action.

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3 Even if EFSEC had the authority to grant a stay, the motion does not set forth an  
4 adequate basis and analyze the requirements necessary for a stay. The basis for the  
5 motion must be set out on its face.

6 Therefore the motion should be dismissed.

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9 DATED this 4<sup>th</sup> day of August, 2004

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12 Darrel L. Peeples, WSBA No. 885  
Attorney for Applicant  
STOEL RIVES, LLP

13 DATED this 3<sup>rd</sup> day of August, 2004

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16 By: Timothy L. McMahan, WSBA No. 16377  
17 Attorneys for Applicant  
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